



Office of Labor Relations
LABOR RELATIONS LETTERS

Date: July 14, 2004

Letter No. LR 2004-01

Subject: Administration and enforcement of prevailing wage rates determined or adopted by HUD

- I. Statutory provisions and prior guidance**
- II. Elimination of payroll certification and submission, payroll deduction and weekly wage payment requirements**
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- V. Labor standards clauses for routine and non-routine maintenance contracts**
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The Department of Housing and Urban Development (HUD) has undertaken efforts to streamline and otherwise reform its policies and instructions relating to the administration and enforcement of prevailing wage rates determined or adopted by HUD (*aka* HUD-determined wage rates). Ultimately, HUD intends to publish regulations and other formal directives relating to these areas. The purpose of this Letter is to provide relief and interim guidance for public housing authorities (PHAs), tribes, tribally designated housing entities (TDHEs), and their contractors. Note that the guidance in this Letter pertains only to HUD-determined wage rates applicable to maintenance and non-routine maintenance. This guidance does **not** pertain to construction work subject to Davis-Bacon and Related Act wage and reporting requirements.

This guidance is provided with the cooperation and advice of the Offices of Public and Indian Housing, Native American Programs, and General Counsel.

I. Statutory provisions and prior guidance

HUD prevailing wage requirements are imposed at Section 12(a) of the U.S. Housing Act of 1937, as amended, for public housing and at Section 104(b) and 805(b) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, for Indian housing and Native Hawaiian housing, respectively. Generally, these clauses require, in part, that all maintenance laborers and mechanics employed in the operation of the housing

project (which includes routine and non-routine maintenance work) be paid no less than the wage rates prevailing in the locality as determined or adopted (subsequent to a determination under applicable State, local or tribal law) by HUD.¹

In developing its operational policies and procedures for these areas of responsibility, HUD relied upon the framework established by the Department of Labor (DOL) for the Davis-Bacon and Related Acts (DBRA). HUD disseminated its policies and procedures in draft Notice 95-01-SL and in associated memoranda, contract standards, training materials and other communications.

DBRA standards are similar to those associated with HUD prevailing wage requirements, but in some cases are more stringent. HUD has discretion to establish policies and procedures for HUD-determined wage rates different from the DOL DBRA standards. HUD has concluded that it is reasonable and desirable to establish a prevailing wage administration and enforcement framework for HUD-determined wage rates that is less burdensome on PHAs, TDHEs and their contractors.

II. Elimination of payroll certification and submission, payroll deduction and weekly wage payment requirements

Prior HUD guidance required contractors and/or subcontractors performing work subject to HUD-determined wage rates to submit weekly certified payroll reports to the PHA, tribe or TDHE involved, and to comply with DOL regulations at 29 CFR Part 3 concerning permissible payroll deductions. In addition, HUD required that all laborers and mechanics (covered by HUD-determined wage rates) be paid not less often than once a week. These requirements were contained in the draft Notice 95-01-SL and in HUD Form 5370, General Conditions (for non-routine maintenance). Effective immediately, HUD is amending its guidance and HUD Form 5370 to eliminate the payroll certification and submission and weekly wage payment requirements.²

Note that with regard to records, the HUD is eliminating only the requirements to certify and submit payroll reports. This action does not relieve contractors and/or subcontractors of

¹ Note that under NAHASDA, HUD-determined wage rates may be preempted by tribally determined prevailing wage rates; see ONAP Program Guidance No. 2003-04. Additionally, bona fide volunteers are excluded from HUD prevailing wage requirements; see 24 CFR Part 70.

² Following consultation with the Department of Labor, HUD has concluded that DOL regulations at 29 CFR Parts 3 and 5 are not germane where HUD prevailing wage requirements are applicable.

their obligations to create and maintain records demonstrating their compliance with HUD-determined prevailing wage requirements.

See Sections III and IV of this Letter concerning recordkeeping, payroll deduction and pay frequency requirements.

III. Recordkeeping requirements

PHAs, tribes, TDHEs, and any other employers (e.g., contractors, subcontractors) engaged on work subject to HUD-determined wage rates must make and maintain for 3 years from the completion of the work records containing information demonstrating compliance with the prevailing wage rates determined (or adopted) by HUD and applicable to the work.³ These records must at a minimum contain for each laborer and mechanic employed:

- 1) His or her name, address and social security number;
- 2) Correct work classification or classifications;
- 3) Hourly rate or rates of monetary wages paid;
- 4) Rate or rates of any fringe benefits provided;
- 5) Number of daily and weekly hours worked;
- 6) Gross wages earned;
- 7) Any deductions taken; and
- 8) Actual wages paid.

Such records shall be made available for inspection or transcription by authorized representatives of the PHA, tribe, TDHE and/or HUD.

IV. Payroll deductions and frequency of wage payments

Employers (PHAs, tribes, TDHEs, contractors and/or subcontractors) must pay to each employee subject to HUD-determined wage requirements the full amount of wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations). These payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period may not be of any duration longer than semi-monthly.

³ The recordkeeping burden reflected is required by DOL and approved by the Office of Management and Budget under control number 1215-0017.

V. Labor standards clauses for routine and non-routine maintenance contracts

PHAs, tribes and TDHEs that award contracts for routine or non-routine maintenance work must incorporate into the contract appropriate labor standards clauses to obligate and ensure the compliance of the contractor and any subcontractors.

HUD has published contract standards applicable to non-routine maintenance in HUD Form 5370, General Conditions (04/2002). HUD expects to revise the HUD-5370 and to publish contract standards that will incorporate the changes reflected in this Letter.

For interim use, PHAs, tribes and TDHEs may make amendments consistent with the guidance in this Letter to the current HUD-5370 at clause 47, Labor Standards – Non-routine Maintenance, for non-routine maintenance contracts. PHAs, tribes and TDHEs may also fashion labor standards clauses for routine maintenance contracts consistent with this guidance.

VI. Compliance monitoring and employee interviews

PHAs, tribes and TDHEs shall perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work they perform. Such compliance monitoring shall include interviews with the employees. Contractors and/or subcontractors shall permit authorized representatives of the PHA, tribe, TDHE or HUD to interview employees during normal working hours.

Any questions regarding this Letter should be directed to the field or Regional HUD Labor Relations staff responsible for the jurisdiction involved. A list of Labor Relations staff and contact information is available at the Office of Labor Relations website:

www.hud.gov/offices/olr

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Director

Office of Labor Relations